IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 202 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

FARIDAHMED ABDULSAMAD

Appearance:

1. INCOME TAX REFERENCE No. 202 of 1986

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL for MR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following two questions have been referred to this court under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

1. Whether on the facts and in the circumstances of the case the finding of the Appellate Tribunal that the share income of the assessee from the firm of M/s. Neelam Industries and Weigh Bridge is the real income of the trust known as K.S. Lokhandwala Family Trust and is liable to be assessed in the hands of the trust and not in the hands of the assessee is correct in law and sustainable from the material on record?

2. Whether on the facts and in the circumstances of the case the Appellate Tribunal has been right in law in declaring that the share income of Rs. 98,643/- of the assessee from the partnership firm of M/s. Neelam Industries and Weigh Bridge was in fact income of K.S. Lokhandwala Family Trust?

2. We have heard learned advocate Shri Akil Qureshi appearing for the applicant and learned advocate Shri R.K. Patel appearing for the respondent assessee.

3. Looking to the questions referred to this Court, this Court has to express its opinion on the question whether the income, which the assessee had received, was in fact the income of the assessee or was income of K.S. Lokhandwala Family Trust. In other words, whether the income in question has to be assessed in the hands of the assessee or K.S. Lokhandwala Family Trust.

4. Our attention has been drawn to an order passed by the Tribunal in the case of the Trust wherein it has been decided that the income in question was of the Trust and not of the assessee. It has been also submitted by the learned advocates that for the same Assessment Year K.S. Lokhandwala Family Trust or the revenue had also filed an appeal before the Tribunal and possibly the said appeal has been finally decided, but the learned advocates are unable to give any details with regard to the number of the said appeal. They are also unable to state whether the order passed by the Tribunal in the said appeal had ultimately become final or whether a reference was filed in this Court.

5. Looking to the above fact, it is not possible to know whether the amount of income, which the revenue desires to assess in the hands of the assessee, was in fact included in the income of K.S. Lokhandwala Family Trust. If, by a final order of the Tribunal or in pursuance of a reference filed in this Court, the amount in question was treated as income of the Trust, it would be improper to tax the assessee again in respect of the said income. In absence of any specific information, it would not be possible for this Court to render any opinion on the questions referred to this Court and therefore we decline to answer the questions and direct the Tribunal to look into the record of the case of K.S. Lokhandwala Family Trust and pass necessary order after considering the final order passed in the case of K.S. Lokhandwala Family Trust by the Tribunal.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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